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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,552	07/24/2003	Sergio Landau	BJT 341RI	3550

7590 10/03/2006

Peter E Heuser
Kolisch Hartwell PC
200 Pacific Building
520 SW Yamhill Street
Portland, OR 97204

EXAMINER

GILBERT, ANDREW M

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.	Applicant(s)	
	10/627,552	LANDAU, SERGIO	
	Examiner	Art Unit	
	Andrew M. Gilbert	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 21-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/1/04; 11/21/05; 11/25/05; 12/19/05</u> | 6) <input type="checkbox"/> Other: _____ |

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,262,629 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-20, drawn to a needle-less hypodermic jet injection device comprising a second body manually moveable relative to a first body and containing an abutment member moveable into engagement with a drug injection piston as a result of the manual movement and means for selectively moving and impaling a pressure cartridge to eject medication in response to a singular user input; an injection cartridge including a plug member that seals a drug cartridge in a first position and is captive with the unsealed drug cartridge in a second position; a trigger assembly containing a hammer member with legs, a sear ring member, and means

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for urging hammer member to a second position; and a hammer member including a circular cylindrical portion including a tubular skirt cooperating with a central wall in combination with the other elements in the claims, classified in class 604, subclass 68.

- II. Claims 21-37, drawn to a needle-injection device having a liquid container having an outlet orifice, an injection orifice fluidly coupled with the outlet orifice and configured to inject fluid forwardly out of the needle-less injection device along an injection axis to an injection site, a plug member displaceable from a first position to a second position to permit fluid flow out of the outlet orifice; plural bypass conduits defined between the outlet orifice of the liquid container and the injection orifice when the plug member is in the second position, such that the bypass conduits permit fluid flow to the injection orifice, and wherein the bypass conduits have outer walls with terminal forward end portions that are streamlined and extend at acute angles relative to a portion of the injection axis, classified in class 604, subclass 236.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I are II related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as having the elements mentioned above such that subcombination I is separately useable

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as a having a trigger member and a handpiece assembly being powered, such as by gas, for forcefully moving the piston in response to the trigger. Whereas, subcombination II, for example, does not recite a trigger member of any means or that the device is powered. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Election/Restrictions

5. Newly submitted claims 21-37 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See discussion above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03 and 1450.

Information Disclosure Statement

6. The information disclosure statement (IDS) submitted on 3/1/2004, 11/21/2005, 11/25/2005, and 12/19/2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Allowable Subject Matter

7. Claims 1-20 are objected to as being the original claims from US Pat No 6,264,629 and the original claims cannot be reissued in the first reissue application as **unamended** since the original claims do not correct any error in the original patent (by themselves).

8. The Applicant is advised that the nonelected (newly added) claims will only be examined if filed in a divisional reissue application. Once a divisional application containing the newly added claims is examined and such claims are determined to be allowable, the Examiner will send to the Applicant a requirement under 37 CFR 1.177 to merge the two (or more) sets of allowable claims (ie - the original claims in the first reissue application and the newly added claims in the divisional application) into a single application, setting a two-month period (a *Quayle* action). If Applicant fails to respond to the requirement or otherwise refuses to comply:

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- a. The added and examined claims (of the divisional application) will be passed to issue alone, since they, by themselves, do correct an error in the original patent, and
 - b. Prosecution will be reopened in the suspended first reissue application, and a rejection based on lack of reissuable error under 35 USC 251 will be made in the first reissue application.
9. If the divisional application(s) goes abandoned, prosecution will be reopened in the suspended first reissue application, and a rejection based on lack of reissuable error under 35 USC 251 will then be made in that application. Since no error in the original patent is being corrected, no reissue will issue.
10. For further discussion of the requirements see 35 CFR § 251 and MPEP § 1450.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Gilbert whose telephone number is (571) 272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Gilbert

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

